

MINUTES
ZONING BOARD OF APPEALS MEETING
October 11, 2022

Call to Order and Roll Call

The meeting was called to order at 7:01 p.m. by Chairperson Greg Constantino, who explained the advisory function of the Zoning Board of Appeals (ZBA) and its process of deliberation and recommendation, and the notice given for the meeting's Public Hearing. Roll was called. Present: Chairperson Constantino and Board Members Matthew Jones, Katie Crudele and Thomas Whalls. Absent: Reed Panther and Chip Miller. The Chairperson described Public Hearing protocols, announced that the meeting would be recorded, and introduced Village Associate Planner Taylor Gendel, Recording Secretary Barb Dutton and Village Board Trustee Anne Gould. Senior Planner Atrian Fard was also in attendance, and Community Development Director Martin Scott subsequently joined the meeting.

Approval of Meeting Minutes

A motion by ZBA Member Crudele to approve the draft minutes of the Sept. 13, 2022 meeting, seconded by Member Whalls, passed by voice vote.

Public Hearing for 364 Lorraine Road

A motion by Board Member Jones to open the Public Hearing concerning for 364 Lorraine Road, seconded by Member Crudele, passed by voice vote.

Staff Presentation

Sworn in, Associate Planner Taylor Gendel, 535 Duane St., stated that the Petitioners, Craig and Erin Pavlich, owners of the property at 364 Lorraine Road, are requesting approval of variations from the Glen Ellyn Zoning Code to allow all freestanding accessory structures on the zoning lot to occupy 31.9 percent of the required rear yard where a maximum of 30 percent of a required rear yard or 1,000 SF, whichever is less, is allowed to be covered by freestanding accessory structures on the lot. The property is an interior lot located in the R2 Residential Zoning District on the northwest side of Lorraine Road, between N. Kenilworth Avenue and Philips Avenue. The zoning and land use around the property, continued Ms. Gendel, is R2 single-family residential. The residence at 364 Lorraine Road currently has a lot coverage ratio (LCR) of approximately 24.4 percent. The current house and detached garage were built in 1954 and 1962, respectively.

The homeowners would like to replace their current 443.77SF detached garage with a new 658.75SF garage. In the R2 District, the minimum required rear yard is 40 ft. in depth. The subject lot has an irregularly shaped backyard, narrowing in the rearmost portion due to the adjacent curved streets bounding the block (Windsor and Chesterfield Avenues). This leads to an undersized rear yard, which restricts the required rear yard and the total area permitted for accessory structures on the lot. According to the submitted plat of survey (2013), the subject lot has a required rear yard of 2,064SF. Thirty percent of this area is 619.2SF, which is less than 1,000SF, therefore, she said, the total area of all freestanding accessory structures on the lot is limited to 619.12SF. The proposed garage would result in a total of 31.92 percent of freestanding accessory structures on the lot, exceeding the requirements by 1.92 percent, necessitating a variation.

The Petitioners offer assurance that the new garage will meet all setback, height and easement requirements and not obstruct views or light from the neighboring properties. If the variation is not granted, concluded Ms. Gendel, the Petitioners would need to build a two-story garage structure on the lot to achieve the same use and storage space; a taller structure with smaller footprint on the lot would be permitted by right but would be more visible to neighbors. Their application includes signed letters of support from four neighbors, noted Associate Planner Gendel, who outlined ZBA action to be taken on the matter. Chairperson Constantino asked how the minimum depth for a rear yard is determined. Associate Planner Gendel replied that it is 40 ft. from the rear lot line. She confirmed his assumption that if the lot in question had the same area but was rectangular it would have ample rear-yard SF for the proposed garage.

Petitioner's Presentation

Sworn in, Craig Pavlich, 364 Lorraine, stated that there are two elements at play relative to the Petitioner's request, one of these being a disagreement on interpretation of Code, though he said, regardless, he still thinks he deserves a variation. He said the layout of his house, which was designed and built by former Village President Frank Weidner, predates the Code in question. Mr. Pavlich stated that it's been the Petitioners' intent to conform to the rules and to keep the architecture consistent. He maintained that there's a question as to whether the Code as written is applicable to an interior lot, and asserted that the irregular-shaped qualifies for a variance. Arguing that the area would be appropriate for the proposed garage, Mr. Pavlich said his lot meets ancillary requirements, including green space and drainage, and the only problem is the required rear yard, due to the configuration of nearby streets. He said that the design for the garage preserves the character of the neighborhood, and stressed that he and his wife are preservationists who are trying to keep their house livable for as long as possible. Chairperson Constantino called the presentation and sizeable information package delivered by the Petitioner helpful.

Board Member Whalls delivered proposed findings of fact. Board Member Crudele motioned to accept these findings; seconded by Member Jones, the motion passed unanimously by roll call vote of all ZBA members present.

Deliberation

Board Member Crude said she is in favor of the requested variance, citing the irregular lot and the Petitioners' value on preservation. Member Jones also expressed favor, suggesting that the request is within acceptable parameters, and voicing appreciation of the Petitioners' maintenance of a Mid-Century Modern house. In agreement, Member Whalls said he likes the height of the proposed garage. Chairperson Constantino said he is in favor of recommending that the variation be granted, seeing the irregular shape of the lot as an undue hardship.

Member Whalls, seconded by Member Crudele, moved to close the Public Hearing; the motion carried unanimously by roll call vote of all ZBA members present. Board Member Jones moved for the following:

Having considered the application of Craig and Erin Pavlich, owners of the property at 364 Lorraine Road, Glen Ellyn, for zoning variations from Section 10-5-4(A)2(a) to allow all freestanding accessory structures on the zoning lot to occupy 31.9 percent of the required rear yard where a maximum of 30 percent of a required rear yard or 1,000 square feet, whichever is less, is allowed to be covered by

freestanding accessory structures on the lot, the Zoning Board of Appeals hereby adopts the findings of fact in the petitioners' application packet and presented by the petitioners at the Zoning Board of Appeals public hearing conducted on October 11, 2022, as well as the findings included in the deliberations of the Zoning Board of Appeals and recommends APPROVAL based on the following hardships or unique circumstances: Due to the characteristic of the property in question, there are practical difficulties or particular hardships for the applicant; the adjacent curved streets bounding the block of Windsor and Chesterfield Avenues creates an irregular-shape lot that limits the rearmost portion of the subject lot as the reason presented for recommended approval.

Seconded by Board Member Whalls, the motion passed by roll call vote with all Board members present voting YES. Member Jones then motioned to close the Public Hearing portion of the meeting; seconded by Member Whalls, the motion passed by voice vote.

Other Business

Chairperson Constantino introduced a discussion about construction-necessitated variation (CNV) policy, noting that CNVs have become more prevalent in recent years, raising eyebrows and concerns. He turned the discussion over to Sr. Planner Fard, who related that Staff has been asked by the Village Board and the ZBA to revisit Glen Ellyn's requirements for a CNV, which is defined as "a variation requested after the issuance of a valid building permit related to the variation or a variation needed for any phase of construction that is in progress or has already occurred, either with or without a valid building permit and approved plans, that violates applicable Zoning Code regulations." Upon receipt of a CNV request from the Zoning Code, she said, the Village suspends the building permit and no additional work is allowed to be done until approval is granted. From January 2000 to December 2003, related Ms. Fard, the Village received 10 variation requests for construction projects that were completed contrary to approved plans and the Zoning Code. At that point, she continued, the Village Board discussed the issue and suggested that the relatively low cost of seeking the variance and the short processing time of the request, lead developers/property owners to apply for relief rather than bring the project into compliance.

Consequently, related the Sr. Planner, on March 8, 2004 the Village Board adopted Ordinance No. 5245 which requires that the following items be provided for CNVs in addition to all the prerequisites of a regular variation:

- The fee for a CNV was raised from \$450 (the cost of a regular variance at the time) to \$900.
- An escrow fee of \$2,000 was added to pay for Village out-of-pocket expenses.
- A current site survey was required to show the details of the actual variation request.
- A timeline of events that led to the violation.
- Possible alternatives with cost estimates, along with the Petitioner's preferred solution.

Since then, continued Ms. Fard, fees for regular variations increased to the current \$660 and to \$1,100 for Construction Necessitated Variations. Between 2004 and 2021, she reported, the Village has received 25 CNV requests, 12 of which were between 2018 and 2021. It is important to note, she added, that the Village has received five additional CNV requests in the first half of 2022 – which she called "a pretty large number." With the recent spike in the number of CNV applications, reported Ms. Fard, Staff was asked to survey of 11 peer communities to find a solution to reduce such cases. Ten of the 11 surveyed treat them as typical variation requests – including Lombard which, she related, only doubles the fees for such requests. Only Arlington Heights puts the project on hold and issues citations to bring projects into compliance. It appears that Glen Ellyn is the only community with regulations differentiate the procedure

and requirements of CNVs from regular variations, she stated, although the process as it stands now does not seem to be deterring homeowners from applying for relief rather than coming into compliance with the Zoning Code. Member Crudele asked if any of these communities experience an influx of CNVs, to which Sr. Planner Fard replied, “No they don’t.” Member Crudele asked how CNVs are discovered in Glen Ellyn. Mr. Fard related that majority she’s seen were found by detailed Village inspections, while some are discovered through neighbors saying they don’t see permits. Member Jones asked how many problems relative to lack of permit are seen that require additional staff work. Ms. Fard explained that infractions subject to relief from the Zoning Code cause considerable research work for planners. Chairperson Constantino asked the objectives for evaluating the situation. Indicating that the expectation is not necessarily to narrow down the approach to one solution but the ZBA could recommend a hybrid route, Sr. Planner Fard list the following potential remedies for ZBA consideration and feedback:

1. **Fees:** One solution could be increasing CNV fees (though this approach might present a burden on some residents, while not being effective against affluent ones).
2. **Number of Violations:** Another solution could be to reflect in the fees the number of requested variations (i.e., multiplying the fee by the number CNVs).
3. **Inspections:** Implementing pre-pour inspections for driveways, walkways and patios, a practice that could potentially catch a third of violations before final inspection.
4. **Remove CNV Process:** Since defining the CNV process could encourage residents to ask for relief thinking they can get a “second chance,” removing the CNV process might offer a solution.
5. **Rigorous Application of Standards:** This approach would involve rigorous application of standards (rather than applying a more liberal view to the process) to promote caution in the community.
6. **Rate of Approval:** Addressing what is seen to have been a high approval rate of CNV requests is an approach suggested to quell precedent and thereby discourage contravention.
7. **Provide a Copy of the Approved Plans to the Homeowners:** Staff suggests that if the contractor is listed as the main point of contact on the application, the Village provide a copy of approved plans to the homeowners to build their knowledge of the work to be done. (While Member Jones advocated for a method to better ensure homeowner receipt of information/comprehension, while Member Crudele suggested that homeowners entrust their paid contractors to be concerned with project details.)
8. **Disclaimer:** Having owners sign a separate form with a disclaimer section that informs them of their responsibility could serve to keep them “more kept in the loop” relative to their projects.
9. **Contractor Citation:** Staff suggests issuing a citation to the contractor to bring a violation into compliance, if the contractor was the permit applicant.
10. **Village Approval in Different Stages:** Another potential solution to reduce post-construction variation requests is to request certification surveys prior to completing certain aspects of the work.

Board Member Jones suggested making pre-pour inspections mandatory for driveways, walkways and patios. Sr. Planner Fard pointed out that while added inspections could impact permit fees and staff time, they could reduce CNVs by 34 percent. To evaluate cost trade-offs, Member Crudele asked how many permits result in CNVs. Replying that that she didn’t have handy the total number for the past year, Ms. Fard said that 34 percent from 2000 until now is a good percentage, though said there were fewer than 10 over all these years. Observing there wasn’t a lot of construction going from 2008 to 2012, Member Jones said that yet from 2012 to 2018, “We had basically zero (or we didn’t catch any).”

Acknowledging that the CNV situation presents layers of complexity, Member Crudele said she likes the pre-pour inspection idea, but in the interest of saving taxpayer dollars, suggested limiting inspections, so not every project is subject to one; Member Whalls, however, noted that changes happen post-pour. Ms. Fard said that the Village performs final inspections for such work, though requires foundation surveys. Though discouraging an overly liberal policy, Member Jones cautioned against making zoning so restrictive that it deters building activity. Chairperson Constantino asked the nature of issues prevalent among CNVs. Sr. Planner Fard attributed the rate of approval as the driving factor in CNV cases she's seen, and that as much as Staff tries to enforce compliance, the history of approvals encourages an attitude that a variance can fix a problem. Member Crudele asked the most common CNV infractions, to which Ms. Fard listed accessory structures, driveway encroachments into pervious surface setbacks, and LCR violations. She noted that once a project is done, an appeal cannot be granted administratively.

Member Jones asked if the entire Zoning Code should be reviewed. Community Development Director Scott replied that a review is slated for next year, following update of the Comprehensive Plan, which guides zoning ordinances. Mr. Scott, who said he has seen variations commonly stem from the trend toward outdoor living and the desire to expand older homes, professed that tighter CNV restrictions would not significantly "chase off" builders, and that because Glen Ellyn is so attractive, stricter requirements wouldn't dampen reinvestment in the way high demolition permit fees or restrictive architectural review of single-family homes can. Member Jones asked if an LCR of 25 percent substantially reduces the incidence of CNVs, to which Ms. Fard replied, "It does." Member Whalls observed that a 20-percent LCR prohibits courtyards and inlets, instead promoting architectural rectangles and boxes. Citing a case in which a copious amount of pervious pavers – an improvement – were installed, Member Crudele asserted that the Code needs to be updated to account for innovation. She said she doesn't want to be pressured to vote a certain way in considering a case, and so, if need be, would rather do away with CNVs. Acknowledging this is a potential direction, Chairperson Constantino suggested as an alternative an "a la cart" approach in which charges apply per item. Ms. Fard noted that even with Staff enforcing compliance anyone can appeal based on Code, even if its provisions are stricter. She indicated that despite Staff documentation, Board rulings can set precedent. In response, Member Whalls pointed to cases in which he said the Village was culpable, necessitating CNVs. Observing variances can run from minimal to flagrant, Chairperson Constantino supported judging violations based on degree, and in a consistent manner. Mr. Whalls endorsed an unswerving approach. To a query from Member Whalls as to an example of a town with a lower LCR than Glen Ellyn, Sr. Planner Fard said there weren't any, explaining that LCRs are established to diminish stormwater issues, and said that since Glen Ellyn is hilly a large LCR could be problematic. Member Whalls said he hopes for an LCR standard of 25 percent, to which Sr. Planner Fard said engineers would need to weigh in. Member Jones asked the LCR for DuPage County unincorporated. Sr. Planner Fard indicated that it is likely higher than the Village's in the interest of flexibility. To a question from Chairperson Constantino as to whether the Village Board has to sign off on/ initiate fee increases, Sr. Planner Fard said that if a standard is mentioned in the Code, then it needs Village Board approval. Chairperson Constantino remarked that, in talking about rigorous application of the standards and maybe looking at the rate of approval indirectly, the Boards will need to be aligned in the effort to implement policies and procedures. Director Scott asserted that educating builders should be part of the program, and urged creating a message about changes coming. Member Whalls noted that Hinsdale and Elmhurst meet with builders to elicit input. Director Scott said a focus group could be formed. Chairperson Constantino advocated for a message that conveys an understanding of honest mistakes, but doesn't encourage pushing the envelope.

Staff Report

Sr. Planner Fard reported that at least one case (a porch variation request) is expected to be on the Nov. 8th meeting agenda.

Trustee's Report

Trustee Liaison Gould related that the Board received a presentation on Phase II of the streetscape plan, with details on phasing, and that Economic Development Coordinator Meredith Hannah is working to marshal resources to support north side businesses during the work. Ms. Gould said the Board approved the Glen Estates Hill Avenue subdivision for a project to yield seven homes, and that the McChesney site apartment complex project completion date has been pushed from January 2024 to July 2024.

Adjournment

Chairperson Constantino adjourned the meeting at 9:14 p.m., following a voice vote on a motion by Member Whalls and which was seconded by Member Jones.

Respectfully submitted,

Barbara Dutton-Thomas

Recording Secretary